
TITLE 71 INDIANA HORSE RACING COMMISSION

Emergency Rule
LSA Document #12-525(E)**DIGEST**

Amends [71 IAC 2-9-1](#) regarding the allocation of race dates and permits. Amends [71 IAC 8-3-5](#) and [71 IAC 8.5-2-5](#) regarding out of competition testing. Amends [71 IAC 13-1-3](#) regarding information to be submitted with a registration. Effective September 10, 2012.

[71 IAC 2-9-1](#); [71 IAC 8-3-5](#); [71 IAC 8.5-2-5](#); [71 IAC 13-1-3](#)

SECTION 1. [71 IAC 2-9-1](#) IS AMENDED TO READ AS FOLLOWS:

[71 IAC 2-9-1](#) Allocation of race dates and permits

Authority: [IC 4-31-3-9](#)

Affected: [IC 4-31-5](#)

Sec. 1. (a) The commission shall allocate race dates and permits to each association in accordance with the Act and after consideration of the factors in [71 IAC 11-1-7](#). An association shall apply to the commission not later than November 1 of each year for race dates to be conducted in the next year. The application must contain the information required by statute and commission licensing procedures. After the request is filed, the commission may require the association to submit additional information.

(b) The burden of proof is on the association to demonstrate that the assignment and allocation of the race dates will be in the public interest and will achieve the purposes of the Act.

(c) The association shall be obligated to conduct pari-mutuel racing, except in the case of emergencies, on each race date allocated. Any change in race dates must be approved by the commission. In the case of emergencies, the judges, **stewards, or the executive director** may authorize cancellation of all or a portion of any race day.

(d) Racing dates shall be issued by the commission no later than December 31 of each year.

(Indiana Horse Racing Commission; [71 IAC 2-9-1](#); emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1125; emergency rule filed Jan 27, 1995, 3:30 p.m.: 18 IR 1496; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2825, eff Jul 1, 1995; emergency rule filed Jun 8, 1999, 9:30 a.m.: 22 IR 3121, eff May 26, 1999 [[IC 4-22-2-37.1](#) establishes the effectiveness of an emergency rule upon filing with the secretary of state. LSA Document #99-107(E) was filed with the secretary of state June 8, 1999.]; emergency rule filed Jun 8, 1999, 9:31 a.m.: 22 IR 3124, eff May 26, 1999 [[IC 4-22-2-37.1](#) establishes the effectiveness of an emergency rule upon filing with the secretary of state. LSA Document #99-108(E) was filed with the secretary of state June 8, 1999.]; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: [20070404-IR-071070030RFA](#); emergency rule filed Sep 10, 2012, 2:01 p.m.: [20120912-IR-071120525ERA](#))

SECTION 2. [71 IAC 8-3-5](#) IS AMENDED TO READ AS FOLLOWS:

[71 IAC 8-3-5](#) Out of competition testing

Authority: [IC 4-31-3-9](#)

Affected: [IC 4-31-12](#)

Sec. 5. (a) Any horse eligible to race in Indiana under this subsection is subject to testing without advance notice for prohibited substances, practices, and procedures as specified in subsection (f), while the horse is located on the grounds of a racetrack under the jurisdiction of the commission, or stabled off association grounds while under the care or control of trainer or owner licensed by the commission under the restrictions listed in subsection (e). A horse is eligible to race in Indiana if it is listed:

- (1) on an owner's or trainer's license application; or
- (2) a stall application, nomination list; or
- (3) on the horse sign-in sheet at any time during the meet; or
- (4) has raced at any Indiana race meet during the calendar year.

A horse shall be presumed eligible if it is a racing breed, at least two (2) years old and an Indiana bred or sired horse. The owner of such an Indiana bred or sired horse may render the horse ineligible for the testing as described in this regulation by indicating in writing the Indiana bred or sired horse is not intended to race in Indiana, pursuant to subsection (b) below provided that the owner of such an Indiana bred or sired horse provides such written notice to the office of the commission thirty (30) days before the horse turns two (2) years old or within thirty (30) days after the owner acquires the horse. In this event, the horse shall be deemed ineligible for racing in Indiana as provided for in subsection (b) below.

(b) If a horse to be tested is not covered under subsection (a), the executive director or judges may nevertheless test any such horse as eligible to race in Indiana for prohibited substances, practices, and procedures specified in subsection (f), unless the owner or trainer or other authorized representative or designee of such horse immediately represents in writing that the horse is not intended to be, and will not be, raced in Indiana for a minimum of three hundred sixty-five (365) days. If the owner, trainer, or other authorized representative or designee so represents, the horse shall be deemed ineligible for racing in Indiana for no less than three hundred sixty-five (365) days from that date. This three hundred sixty-five (365) day ineligibility to race in Indiana shall follow the horse even if sold or transferred to another owner or trainer. An owner or trainer may, however, consent to the collection of a sample from a horse selected for testing under this rule, even if the horse is not presently intended to be raced in Indiana, and if such horse tests negative, it will remain eligible to race in Indiana.

(c) The executive director or judges may order any horse of a licensed trainer to report to a track under the jurisdiction of the commission for out of competition testing. The trainer is responsible to have the horse or horses available at the designated time and location. In the event that a horse is ordered to report to a track pursuant to the authority granted by this subsection, a licensed trainer is entitled to reimbursement by the commission for mileage (at the current rate paid by the state of Indiana as specified in the current Indiana financial management circular) to and from the location where the horse was stabled when the horse was ordered to report to the track. Under no circumstances will a trainer be entitled to reimbursement for mileage in excess of the actual mileage to the track from the place where the horse was stabled when ordered to report and from the track to the place where the horse is first stabled following the testing. The trainer is not entitled to receive reimbursement from the commission for any other expense relating to any order under this subsection to report to a track for out-of-competition testing.

(d) The official veterinarian, a licensed veterinarian authorized by the commission, a veterinary technician under the direct supervision of the official veterinarian, or a licensed veterinarian authorized by the commission may take a urine, blood, or hair sample from a horse for testing as provided for in this section.

(e) Unless sample collection occurs on the grounds of a racetrack or other location within Indiana under the commission's jurisdiction, the commission's representatives ~~(or its designees, in the case of out-of-state collections)~~ must arrive for the taking of blood, urine, or hair samples from an eligible horse as defined in subsections [subsection] (a) or (b), only between the hours of 7:00 a.m. and noon, after announcing their presence at the premises where the horse(s) to be tested is (are) located and showing their credentials to collect samples from the horse(s) selected for testing for prohibited substances, practices, and procedures as specified in subsection (f). The commission's representatives or designees will request to meet with the trainer or owner of the selected horse(s). If ~~neither~~ **either** is available, the collection will be deferred until the trainer and/or owner, or their representative or designee, becomes reasonably available, but the collection must occur not later than one (1) hour after the commission's designee arrives at the premises in the case of an eligible horse under subsection (a), and not later than two (2) hours in the case of an eligible horse under subsection (b). If the collection does not occur within the time provided for in this subsection, any horse that would have been subject to testing and eligible to race in Indiana will be deemed to be ineligible for racing in Indiana pursuant to the provisions of subsections (a) and (b). In addition, the owner and/or trainer of the horses may be subject to any other sanctions allowed by Indiana law and regulations, including, but not limited to, a fine, suspension, and/or summary suspension. It is a defense to any action brought against an owner and/or trainer for sanctions or as a result of any declaration a horse is ineligible because the sample collection did not occur within the time provided for by this subsection that good cause existed that prohibited the owner, trainer, and/or their representative or designee from complying with the time limits set forth in this subsection. The owner, trainer, and/or their representative or

designee has the burden of proving the good cause defense by a preponderance of the evidence.

(f) Prohibited substances, practices, and procedures are defined as the following:

- (1) blood doping agents including, but not limited to, erythropoietin (EPO), darbepoetin, Oxyglobin, Hemopure, Aranesp, or any substance that abnormally enhances the oxygenation of body tissues;
- (2) gene doping agents or the nontherapeutic use of genes, genetic elements, and/or cells that have the capacity to enhance athletic performance or produce analgesia;
- (3) naturally produced venoms, synthetic analogues of venoms, derivatives of venoms, or synthetic analogues of derivatives of venoms;
- (4) substances capable of producing a repartitioning effect that are not FDA-approved for use in horses, including, but not limited to, ractopamine, zilpaterol, or any similar agent;
- (5) AAS (androgenic-anabolic steroids) other than stanozolol, nandrolone, boldenone, testosterone, and metabolites thereof; and
- (6) the presence in a horse of any substance at anytime listed in subdivision (1), (2), (3), (4), or (5) in an eligible as defined in subsections (a) and (b) above is prohibited and is a violation of this rule.

(g) The trainer and/or his/her designees shall cooperate with the official veterinarian or any licensed veterinarian or licensed veterinary technician authorized by the commission or any commission employee by:

- (1) assisting in the immediate location and identification of the eligible horse selected for out of competition testing; and
- (2) providing a stall or safe location to collect the samples.

The executive director or judges may summarily suspend, exclude, and/or otherwise penalize any trainer and/or other authorized representative or designee who does not fully cooperate with a commission employee or representative in assisting and identifying an eligible horse or providing a safe stall to collect samples in a timely fashion. If any such person is summarily suspended, excluded, or otherwise penalized, she/he shall be entitled to a hearing in accordance with Indiana law and regulations. A summary suspension, exclusion, or sanctions for failure to cooperate shall not issue, however, if a horseman meets his or her burden to establish the good cause defense set forth under subsection (e). This provision does not apply to an owner or trainer who timely provides written notice under subsection (a) or (b) that a horse sought to be tested is not intended to be raced in Indiana and thereby renders the horse ineligible pursuant to subsection (b).

(h) The collection of blood, urine, or hair samples under this rule shall be divided in three (3) parts to be analyzed as follows:

- (1) approved primary laboratory for screening;
- (2) approved primary laboratory for confirmation; and
- (3) approved laboratory for split sample testing as chosen by the owner or trainer.

The commission shall approve the laboratories for screening, confirmation, and split sample testing.

(i) In the absence of extraordinary mitigating circumstances, a minimum penalty of a ten (10) year suspension will be assessed for any violation of subsection (f)(1) and (f)(2) of this rule *[subsection (f)(1) and (f)(2)]*. The Association of Racing Commissioners International, Inc. Uniform Classification Guidelines for Foreign Substances and Recommended Penalties and Model Rule will be considered for violations of (f)(3), (f)(4), and (f)(5) of this rule *[subsection (f)(3), (f)(4), and (f)(5)]* with additional penalties for any drug not FDA approved for use in horses.

(Indiana Horse Racing Commission; [71 IAC 8-3-5](#); emergency rule filed Jul 23, 2007, 9:16 a.m.:

[20070808-IR-071070461ERA](#), eff Jul 18, 2007 [[IC 4-22-2-37.1](#) establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #07-461(E) was filed with the Publisher July 23, 2007.]; errata filed Aug 14, 2007, 1:28 p.m.: [20070829-IR-071070461ACA](#); emergency rule filed Mar 12, 2008, 1:53 p.m.:

[20080326-IR-071080191ERA](#), eff Mar 11, 2008 [[IC 4-22-2-37.1](#) establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #08-191(E) was filed with the Publisher March 12, 2008.]; emergency rule filed Mar 19, 2009, 11:07 a.m.: [20090401-IR-071090195ERA](#), eff Mar 12, 2009 [[IC 4-22-2-37.1](#) establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #09-195(E) was filed with the Publisher March 19, 2009.]; emergency rule filed Mar 3, 2011, 11:50 a.m.:

[20110309-IR-071110100ERA](#); emergency rule filed Sep 10, 2012, 2:01 p.m.: [20120912-IR-071120525ERA](#))

SECTION 3. [71 IAC 8.5-2-5](#) IS AMENDED TO READ AS FOLLOWS:

[71 IAC 8.5-2-5](#) Out of competition testing

Sec. 5. (a) Any horse eligible to race in Indiana under this subsection is subject to testing without advance notice for prohibited substances, practices, and procedures as specified in subsection (f), while the horse is located on the grounds of a racetrack under the jurisdiction of the commission, or stabled off association grounds while under the care or control of a trainer or owner licensed by the commission under the restrictions listed in subsection (e). A horse is eligible to race in Indiana if it is listed:

- (1) on an owner's or trainer's license application; or
- (2) a stall application, nomination list; or
- (3) on the horse sign-in sheet at any time during the meet; or
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A horse shall be presumed eligible if it is a racing breed, at least two (2) years old and an Indiana bred or sired horse. The owner of such an Indiana bred or sired horse may render the horse ineligible for the testing as described in this regulation by indicating in writing the Indiana bred or sired horse is not intended to race in Indiana, pursuant to subsection (b) below provided that the owner of such an Indiana bred or sired horse provides such written notice to the office of the commission thirty (30) days before the horse turns two (2) years old or within thirty (30) days after the owner acquires the horse. In this event, the horse shall be deemed ineligible for racing in Indiana as provided for in subsection (b) below.

(b) If a horse selected to be tested is not covered under subsection (a), the executive director or stewards may nevertheless test any such horse as eligible to race in Indiana for prohibited substances, practices, and procedures specified in subsection (f), unless the owner or trainer or other authorized representative or designee of such horse immediately represents in writing that the horse is not intended to be, and will not be, raced in Indiana for a minimum of three hundred sixty-five (365) days. If the owner, trainer, or other authorized representative or designee so represents, the horse shall be deemed ineligible for racing in Indiana for no less than three hundred sixty-five (365) days from that date. This three hundred sixty-five (365) day ineligibility to race in Indiana shall follow the horse even if sold or transferred to another owner or trainer. An owner or trainer may, however, consent to the collection of a sample from a horse selected for testing under this rule, even if the horse is not presently intended to be raced in Indiana, and if such horse tests negative, it will remain eligible to race in Indiana.

(c) The executive director or stewards may order any horse of a licensed trainer to report to a track under the jurisdiction of the commission for out of competition testing. The trainer is responsible to have the horse or horses available at the designated time and location. In the event that a horse is ordered to report to a track pursuant to the authority granted by this subsection, a licensed trainer is entitled to reimbursement by the commission for mileage (at the current rate paid by the state of Indiana as specified in the current Indiana financial management circular) to and from the location where the horse was stabled when the horse was ordered to report to the track. Under no circumstances will a trainer be entitled to reimbursement for mileage in excess of the actual mileage to the track from the place where the horse was stabled when ordered to report and from the track to the place where the horse is first stabled following the testing. The trainer is not entitled to receive reimbursement from the commission for any other expense relating to any order under this subsection to report to a track for out-of-competition testing.

(d) The official veterinarian, a licensed veterinarian authorized by the commission or a veterinary technician under the direct supervision of the official veterinarian, or a licensed veterinarian authorized by the commission may take a urine, blood, or hair sample from a horse for testing as provided for in this section.

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and not later than two (2) hours in the case of an eligible horse under subsection (b). If the collection does not occur within the time provided for in this subsection, any horse that would have been subject to testing and eligible to race in Indiana will be deemed to be ineligible for racing in Indiana pursuant to the provisions of subsections (a) and (b). In addition, the owner and/or trainer of the horses may be subject to any other sanctions allowed by Indiana law and regulations, including, but not limited to, a fine, suspension, and/or summary suspension. It is a defense to any action brought against an owner and/or trainer for sanctions or as a result of any declaration a horse is ineligible because the sample collection did not occur within the time provided for by this subsection that good cause existed that prohibited the owner, trainer, and/or their representative or designee from complying with the time limits set forth in this subsection. The owner, trainer, and/or their representative or designee has the burden of proving the good cause defense by a preponderance of the evidence.

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- (3) naturally produced venoms, synthetic analogues of venoms, derivatives of venoms, or synthetic analogues of derivatives of venoms;
- (4) substances capable of producing a repartitioning effect that are not FDA-approved for use in horses, including, but not limited to, ractopamine, zilpaterol, or any similar agent;
- (5) AAS (androgenic-anabolic steroids) other than stanozolol, nandrolone, boldenone, testosterone and metabolites thereof; and
- (6) the presence in a horse of any substance at anytime listed in subdivision (f)(1), (f)(2), (f)(3), (f)(4), or (f)(5) [subdivision (1), (2), (3), (4), or (5)] in an eligible as defined in subsections (a) and (b) above is prohibited and is a violation of this rule.

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The commission shall approve the laboratories for screening, confirmation, and split sample testing.

(i) In the absence of extraordinary mitigating circumstances, a minimum penalty of a ten (10) year suspension will be assessed for any violation of subsection (f)(1) and (f)(2) of this rule [subsection (f)(1) and (f)(2)]. The Association of Racing Commissioners International, Inc. Uniform Classification Guidelines for Foreign Substances and Recommended Penalties and Model Rule will be considered for violations of (f)(3), (f)(4), and (f)(5) of this rule [subsection (f)(3), (f)(4), and (f)(5)] with additional penalties for any drug not FDA approved for use in horses.

(Indiana Horse Racing Commission; 71 IAC 8.5-2-5; emergency rule filed Jul 23, 2007, 9:16 a.m.: [20070808-IR-071070461ERA](#), eff Jul 18, 2007 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #07-461(E) was filed with the Publisher July 23, 2007.]; errata filed Aug 14, 2007, 1:28 p.m.: [20070829-IR-071070461ACA](#); emergency rule filed Mar 12, 2008, 1:53 p.m.: [20080326-IR-071080191ERA](#), eff Mar 11, 2008 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #08-191(E) was filed with the Publisher March 12, 2008.]

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SECTION 4. [71 IAC 13-1-3](#) IS AMENDED TO READ AS FOLLOWS:

[71 IAC 13-1-3](#) Information to be submitted with a registration

Authority: [IC 4-31-3-9](#); [IC 4-35-7-12](#)

Affected: [IC 4-31](#); [IC 4-35](#)

Sec. 3. In addition to the information described in section 2(b) of this rule, the registration of a horsemen's association to receive monies allocated pursuant to [IC 4-35-7-12](#) shall include, but not be limited to, the following information:

- (1) A proposed budget for the calendar year (or, in the case of a registration under section 1(c) of this rule, the calendar years) to which the registration applies that separately identifies general categories for the expenditure of funds anticipated to be paid by the permit holders to the horsemen's association for:
 - (A) equine promotion or welfare pursuant to [IC 4-35-7-12](#)(b)(1);
 - (B) backside benevolence pursuant to [IC 4-35-7-12](#)(b)(2); and
 - (C) the purposes provided for in [IC 4-35-7-12](#)(f) in the amount provided for by [IC 4-35-7-12](#)(d)(1)(A)(ii) and [IC 4-35-7-12](#)(d)(1)(A)(iii), ~~[IC 4-35-7-12](#)(d)(2)(A)(ii)~~ [IC 4-35-7-12](#)(d)(2)(C)(ii), or [IC 4-35-7-12](#)(d)(3)(A)(ii).
- (2) A specific description of the accounting, auditing, internal control, and reporting procedures that will be maintained by the horsemen's association with respect to the three (3) separate accounts required by section 8(a)(7) of this rule during the calendar year for which payments will be made, as well as the name and contact information of the individuals responsible for each function.
- (3) A conflict of interest policy approved by the commission that has been executed by all of the officers, directors, and employees of the horsemen's association.
- (4) Certification by an officer of the horsemen's association that no monies distributed pursuant to [IC 4-35-7-12](#) have been used in either the current year or will be used from the budget year for either:**
 - (A) a contribution to a candidate or committee; or**
 - (B) lobbying, as defined in [IC 2-7-1-9](#).**
- ~~(4)~~ **(5) Any other information requested by the commission or its executive director.**

(Indiana Horse Racing Commission; [71 IAC 13-1-3](#); emergency rule filed Jul 11, 2008, 2:13 p.m.: [20080723-IR-071080595ERA](#); emergency rule filed Sep 10, 2012, 2:01 p.m.: [20120912-IR-071120525ERA](#))

LSA Document #12-525(E)

Filed with Publisher: September 10, 2012, 2:01 p.m.

Posted: 09/12/2012 by Legislative Services Agency

An [html](#) version of this document.